



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 5 2009

Jennie Unger Eddy, Esq.
Nielson, Merksamer, Parrinello, Mueller & Naylor, LLP
2350 Kerner Boulevard, Suite 250
San Rafael, CA 94901

RE: MUR 6184
Skyway Concession Company, LLC
Fernando Redondo

Dear Ms. Eddy:

On September 30, 2008, you notified the Federal Election Commission ("Commission") of the possibility of violations by your clients, the Skyway Concession Company, LLC and its Chief Executive Officer, Fernando Redondo, of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

After reviewing the information contained in your submission and its supplement, the Commission, on April 15, 2009, found reason to believe that your clients violated 2 U.S.C. §§ 441e and 441f, provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,



Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENTS:** Skyway Concession Company, LLC MUR: 6184
7 Fernando Redondo
8
9

10 **I. FACTUAL BACKGROUND**

11 This matter originated with a *sua sponte* submission filed by the Skyway
12 Concession Company, LLC ("SCC") on behalf of itself and its Chief Executive Officer,
13 Fernando Redondo. SCC is a Delaware limited liability company, which is
14 headquartered in Chicago, Illinois. <http://sos-res.state.de.us/tin/controller>. 11 C.F.R.
15 § 110.1(g)(1). SCC is wholly-owned by Skyway Concession Company Holdings, LLC
16 ("SCCH"), which is a subsidiary of foreign nationals.¹ SCC was formed on or about
17 September 30, 2004 for the exclusive purpose of operating and maintaining the 7.8 mile
18 Chicago Skyway toll bridge and highway. *See Central Parking Corporation Partnership*
19 *Selected for Chicago Skyway Toll Road System*, www.businesswire.com (January 18, 200
20 Macquarie 5); *Chicago Skyway Handed Over to Cintra-Macquarie After Wiring \$183m*,
21 www.tollroadnews.com (January 24, 2005). The company CEO, Fernando Redondo, is a
22 Spanish citizen working in the United States on an L1A visa.

¹ SCCH is owned by two Delaware limited liability companies, Cintra Skyway LLC and Chicago Skyway Partnership. The available information indicates that Cintra Skyway LLC is wholly owned by the Spanish corporation, Cintra Concesiones De Infraestructuras De Transport SA, a private-sector developer of transportation infrastructure. *See* 2008 Thomson Extel Financial Database. Chicago Skyway Partnership is owned by the Australian Macquarie Infrastructure Group and Macquarie Infrastructure Partners. The Macquarie Infrastructure Group develops and operates toll roads and Macquarie Infrastructure Partners is an unlisted diversified fund focusing on infrastructure investments in the United States. *See Central Parking Corporation Partnership Selected for Chicago Skyway Toll Road System*, www.businesswire.com (January 18, 2005), 2008 Thomson Extel Financial Database; www.macquarie.com).

1 From November 29, 2005 through March 18, 2008, Mr. Redondo, on behalf of
2 SCC, authorized 30 contributions totaling \$13,085 to state and local political
3 committees.² The available information indicates that the funds used by SCC to make
4 these nonfederal political contributions were derived from domestic revenues.
5 Specifically, SCC maintains a United States bank account into which it deposits receipts
6 from tolls collected on the Chicago Skyway and from which the company pays expenses
7 associated with its operations, including the subject political contributions. According to
8 SCC, funds from foreign national sources are not deposited into this account. With a few
9 exceptions, SCC made its political contributions based on the recommendations of its
10 public relations consultant, Avis LaVelle.³ Ms. LaVelle either contacted Mr. Redondo
11 directly with recommendations regarding which political contributions SCC should
12 consider or sent fundraising invitations/solicitations to him via his assistant. At this point
13 in the process, Mr. Redondo's assistant filled out check requisition forms, which, in all
14 but two instances, he then approved.⁴ Mr. Redondo also co-signed all the nonfederal
15 contribution checks at issue in this matter. Mr. Redondo's involvement in SCC's

² SCC is treated by the Internal Revenue Service ("IRS") as a "disregarded entity" for tax purposes, which means that its activities are treated in the same manner as a branch or division of its owner. 26 CFR §§ 301.7701-3(b)(1) and 7701-2(a) and (c)(2). Therefore, SCC's taxes are consolidated with those of SCCH, which chooses to file its income taxes as a partnership, per its membership agreement. A contribution by an LLC that elects to be treated as a partnership by the IRS will be considered a contribution from a partnership pursuant to 11 C.F.R. § 110.1(g)(2).

³ According to Mr. Redondo, the one exception was a political contribution to Robert Schillerstrom, the DuPage County Board Chairman, whom Mr. Redondo met at an event regarding the privatization of infrastructure and decided to support without the advice of Ms. LaVelle. It also appears that one campaign committee, the Friends of John A. Pope, solicited contributions from SCC on two occasions by faxing fundraising invitations directly to Mr. Redondo.

⁴ On two occasions, SCC's Chief Financial Officer, Cho Hang "Augustine" Yeung, a permanent U.S. resident and green card holder, authorized two check requisition forms for nonfederal political contributions. Mr. Redondo co-signed both contribution checks. The evidence indicates that although Mr. Redondo's name does not appear on these two forms, he approved all the political contributions made by SCC.

1 political activities often extended to his attendance at fundraising events for political
2 committees to which the company had made contributions. According to the available
3 information, Mr. Redondo attended at least seven of these fundraising events, and on one
4 occasion, he served on the Honorary Host Committee at a holiday reception honoring
5 Ward Alderman John A. Pope.

6 Mr. Redondo made a \$2,000 federal contribution to the Friends of Dick Durban
7 committee with a personal check, dated May 1, 2007. Prior to making this federal
8 contribution, Mr. Redondo submitted a check requisition form requesting reimbursement
9 for two tickets to the fundraising event. The check requisition form indicated that direct
10 corporate donations were not accepted. The reimbursement request, dated April 13,
11 2007, was approved by Mr. Redondo and SCC's Chief Financial Officer Cho Hang
12 "Augustine" Yeung. Mr. Redondo was reimbursed for his federal political contribution
13 by SCC with a company check, dated May 1, 2007.

14 SCC states that it became aware there might be a problem with the contributions
15 at issue during July 2008, or shortly after, through a newspaper article concerning
16 political contributions made by Transurban, the U.S. subsidiary of an Australian
17 company. Anita Kumar, *Toll Road Firm Made Illegal Contribution*, WASHINGTON POST,
18 July 3, 2008, at B05. According to the news article, Transurban, which invests in
19 building and maintaining toll roads in Virginia, violated the Act by using foreign funds to
20 make political contributions to nonfederal candidates. In response to this news article,
21 SCC retained outside counsel to investigate its political contribution practices and
22 determine if the company was in compliance with federal campaign law. This
23 investigation concluded that SCC had violated federal law due to Mr. Redondo's

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1 involvement in approving the subject nonfederal contributions as well as the company's
2 reimbursement of Mr. Redondo's federal political contribution.

3 SCC states that it has taken a number of corrective actions in response to the
4 findings of its internal investigation. SCC requested and received refunds of all
5 campaign contributions made by the company as well as a refund from Mr. Redondo of
6 the \$2,000 reimbursement he received. SCC's Board of Directors also passed a
7 resolution establishing a Campaign Fund Committee to prevent foreign national funding
8 or involvement in future campaign contributions and to ensure compliance with the Act
9 and Commission Regulations. This Committee, comprised solely of U.S. citizens or
10 lawfully admitted permanent residents, will make political contributions exclusively to
11 nonfederal political committees out of an annual budget of \$5,000 funded out of revenues
12 generated on the Chicago Skyway Toll Bridge.

13 In addition, SCC's General Counsel has already briefed senior management on
14 the relevant federal campaign finance law and regulations as well as the company's
15 revised campaign contribution policy. Finally, SCC is in the process of drafting a formal
16 campaign contribution policy to ensure future compliance with federal and state
17 prohibitions, limits and reporting requirements, which will be distributed to all SCC's
18 employees.

19 **II. LEGAL ANALYSIS**

20 **A. Skyway Concession Company, LLC and Mr. Redondo Violated**
21 **2 U.S.C. § 441e**
22

23 The Act defines "contribution" as anything of value made by any person for the
24 purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). It is
25 unlawful for a foreign national, directly or indirectly, to make a contribution or donation

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1 of money or other thing of value, or make an expenditure in connection with a federal,
2 state, or local election. 2 U.S.C. § 441e(a)(1)(A); 11 C.F.R. § 110.20(b). A “foreign
3 national” is an individual who is not a citizen of the United States or a national of the
4 United States and who is not lawfully admitted for permanent residence. 2 U.S.C.
5 § 441e(b)(2). The term also encompasses “a partnership, association, corporation,
6 organization, or other combination of persons organized under the laws of or having its
7 principal place of business in a foreign country.” 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C.
8 § 611(b)(3)).

9 Commission regulations implementing 2 U.S.C. § 441e prohibit foreign nationals
10 from directing, dictating, controlling, or directly or indirectly participating in the
11 decision-making process of any person, including a corporation, with regard to that
12 person's federal or nonfederal election-related activities, such as decisions relating to
13 making contributions, expenditures or disbursements in connection with elections for any
14 local, state, or federal office or decisions concerning the administration of a political
15 committee. 11 C.F.R. § 110.20(i).

16 In addressing the issue of whether a domestic subsidiary of a foreign national may
17 make contributions in connection with local, state or federal campaigns for political
18 office, the Commission has looked to two factors when giving advice to requestors: the
19 source of the funds used to make the contributions and the nationality status of the
20 decision makers. *See* Advisory Opinion 2006-15 (TransCanada). Regarding the source
21 of funds used to make contributions in connection with local, state or federal elections,
22 the Commission did not permit a domestic corporation to make such contributions when
23 the source of funds was a foreign national, reasoning that this essentially permitted the

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1 foreign national to make contributions indirectly when it could not do so directly. *See*
2 Advisory Opinion 1989-20 (Kuilima)(Because Asahi Japan is Kuilima's predominant
3 source of funds, it would essentially be making a contribution to the committee through
4 Kuilima).

5 Even if the funds used for political contributions by a domestic company with
6 foreign ownership are generated domestically, the Commission has also considered the
7 nationality status of the decision makers to determine the legality of the contributions.
8 The Commission has conditioned its approval of contributions by domestic subsidiaries
9 of foreign nationals by requiring that no director or officer of the subsidiary or its parent,
10 or any other person who is a foreign national, participate in any way in the decision-
11 making process regarding the contributions. 11 C.F.R. § 110.20(i); *see* Advisory Opinion
12 1985-3 (Diridon)(No person who is a foreign national under 2 U.S.C. § 441e can have
13 any decision-making role or control with respect to any political contribution made by
14 UTDC, Inc.).

15 Thus, the Act prohibits contributions from foreign nationals, as well as
16 contributions from domestic companies where either the funds originate from a foreign
17 national source or a foreign national is involved in decisions concerning the making of
18 the contribution. 2 U.S.C. § 441e; 11 C.F.R. §§ 110.20(b) and (i). As noted above, SCC
19 used funds derived exclusively from domestic sources to make the 30 nonfederal
20 contributions at issue in this matter. However, SCC admits and the evidence confirms
21 that a foreign national, Mr. Redondo, participated directly in SCC's election-related
22 activities by: (1) vetting the campaign solicitations forwarded to him by the company's
23 public relations consultant or deciding which nonfederal committees would receive

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1 contributions from SCC; (2) authorizing the release of company funds for the purpose of
2 contributing a total of \$13,085 to nonfederal political committees; and (3) signing 30
3 contribution checks directed to nonfederal political committees. In addition, Mr.
4 Redondo made a \$2,000 prohibited federal contribution to the Friends of Dick Durbin
5 committee. Accordingly, the Commission finds reason to believe that the Skyway
6 Concession Company, LLC and Fernando Redondo violated 2 U.S.C. § 441e.

7 **B. Skyway Concession Company, LLC and Mr. Redondo Violated**
8 **2 U.S.C. § 441f**
9

10 The Act prohibits any person from making a contribution in the name of another
11 person, knowingly permitting his or her name to be used to effect such a contribution, or
12 knowingly accepting a contribution made by one person in the name of another person.
13 2 U.S.C. § 441f. The Act defines "person" to include a corporation, a partnership or any
14 other organization or group of persons. 2 U.S.C. § 431(11). It is well settled that a
15 principal is liable for the acts of its agents committed within the scope of his or her
16 employment. RESTATEMENT (THIRD) OF AGENCY § 7.07.

17 SCC admits violating the Act by reimbursing a \$2,000 federal contribution made
18 by its CEO, Mr. Redondo. 2 U.S.C. § 441f. According to SCC, Mr. Redondo not only
19 made the prohibited federal contribution to the Friends of Dick Durbin committee, he
20 also authorized its reimbursement with company funds. The evidence in this matter
21 demonstrates that SCC's officers approved the reimbursement of expenses incurred on
22 behalf of the company on a regular basis. Therefore, the reimbursement of expenses by
23 SCC's officers like Mr. Redondo are within the scope of their employment, and SCC can
24 be held liable for an officer's approval of the reimbursement of an illegal expense, such
25 as the political contribution Mr. Redondo authorized for reimbursement. Further, Mr.

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- 1 Redondo violated 2 U.S.C. § 441f when he authorized the reimbursement of his own**
- 2 federal political contribution to the Friends of Dick Durbin committee. Accordingly, the**
- 3 Commission finds reason to believe that Skyway Concession Company, LLC and**
- 4 Fernando Redondo violated 2 U.S.C. § 441f.**

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